

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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EBEN ALEXANDER, III, M.D.	)	
	)	
	)	
Plaintiff,	)	Case No. 04-10738-MLW
	)	
v.	)	
	)	
BRIGHAM AND WOMEN'S PHYSICIANS	)	
ORGANIZATION, INC., successor to	)	
Brigham Surgical Group Foundation, Inc.,	)	
BOSTON NEUROSURGICAL FOUNDATION	)	
INC., BRIGHAM SURGICAL GROUP	)	
FOUNDATION, INC. DEFERRED	)	
COMPENSATION PLAN, BRIGHAM	)	
SURGICAL GROUP FOUNDATION, INC.	)	
FACULTY RETIREMENT BENEFIT	)	
PLAN, COMMITTEE ON COMPENSATION	)	
OF THE BRIGHAM SURGICAL GROUP	)	
FOUNDATION, INC., and	)	
PETER BLACK, M.D.	)	
	)	
Defendants.	)	
	)	

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**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
ON COUNTS IX AND XII OF THE COMPLAINT**

Plaintiff, Dr. Eben Alexander, hereby respectfully moves for entry of summary judgment in his favor on Count IX (Claim for Benefits under ERISA, 29 U.S.C. § 1132(a)(1)(B)) and Count XII (Attorneys' Fees under ERISA, 29 U.S.C. § 1132(g)) of his Complaint. In support of this motion, Dr. Alexander states that the defendants wrongfully withdrew over \$441,000 of Dr. Alexander's pension funds from two deferred compensation plans maintained by defendant Brigham and Women's Physician's Organization ("BWPO"), purportedly to offset a practice deficit assessed to Dr. Alexander. BWPO's defense for its actions -- that Dr. Alexander's funds were forfeitable because the plans were "top hat" plans under ERISA -- fails as a matter of law

because the plans were not restricted to a “select group of management or highly compensated employees.” 29 U.S.C. §§ 1051(2), 1081(a)(3) and 1101(a)(1). Accordingly, Dr. Alexander’s funds were fully vested and defendants had no right to withdraw the funds.

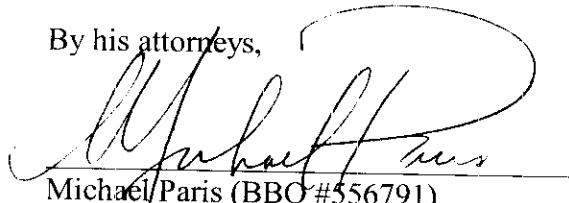
In further support hereof, Dr. Alexander relies upon the following documents: (i) Memorandum of Law in Support of Plaintiff’s Motion for Summary Judgment; (ii) Agreed Statement of Facts for Cross Summary Judgment Motions; (iii) Appendix of Selected Authorities in Support of Plaintiff’s Motion for Summary Judgment; and (iv) Local Rule 56.1 Statement in Support of Plaintiff’s Motion for Summary Judgment.

WHEREFORE, Dr. Alexander respectfully requests that the Court enter summary judgment in his favor on Counts IX and XII of his Complaint.

Respectfully submitted,

EBEN ALEXANDER, III, M.D.

By his attorneys,

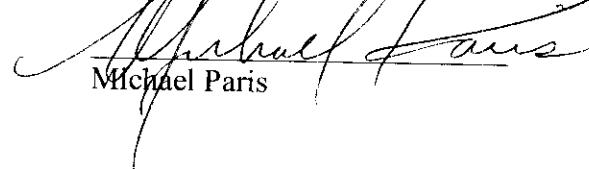


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Dated: April 8, 2005

#### LOCAL RULE 7.1 CERTIFICATION

I hereby certify that on multiple occasions counsel for the parties have conferred by telephone and in-person, and attempted in good faith to resolve or narrow the issues set forth in this motion, and further that the parties sought and obtained the Court’s permission to file this summary judgment motion.



CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon all counsel of record by hand on April 8, 2005.



Colleen C. Cook